



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.26 OF 2015

1. CHARO MANYULE MANGI

2. BAYA YAA MBANGI.....PLAINTIFFS

=VERSUS=

1. TROPICAL TREASURE LIMITED

2. P. M. OMWENGA

3. THE LAND REGISTRAR MOMBASA.....DEFENDANTS

R U L I N G

Introduction:

1. The Application by the Plaintiffs is dated 12th February 2015. In the Application, the Plaintiffs are seeking for the following reliefs:

(a) That this Honourable court be pleased to restrain, by way of an injunction, the Defendants by themselves, assigns, employees, agents, proxies and/or any other person working under their instructions from dispossessing the Plaintiffs, entering into, occupying, evicting the Plaintiffs, constructing, fencing, leasing, disposing any interest and/or undertaking any other development or in any other way interfering with the property and/or the Plaintiffs' quiet possession and/or enjoyment of all that property known as Plot No. 28534/Kilifi (CR. NO. 53828) pending the hearing and determination of this Application.

(b) That the Respondents be condemned to pay costs of this Application.

The Plaintiffs'/Applicants' case:

2. According to the Supporting affidavit of the Plaintiffs, they are the Administrators of the Estate of Manyula Mangi Yaa (deceased).

3. The Plaintiffs have deponed that vide an agreement of sale dated 10th June, 2010, the deceased family's land measuring 83 acres situated at Mitangoni-Mariakani along Nairobi-Mombasa road was sold for Kshs.41,500,000.

4. It is the Plaintiffs' case that while the 1st Respondent was assisting them to procure the letters of administration, the 2nd Respondent took advantage of the Plaintiffs' illiteracy and sneaked in the Transfer documents for signing.

5. The Plaintiffs have deponed that they were shocked when they learnt that the transfer document was executed by the 2nd Defendant and that the suit parcel is the Applicants' family land and their only source of livelihood.

The Defendants'/Respondents' case:

6. The 1st Defendant's counsel deponed and stated that L.R. NO. 28534 (the suit property) was lawfully and procedurally purchased by the 1st Defendant from the Plaintiffs and that there was a successful transfer of the suit property to the 1st Defendant.

7. It is the Defendants' position that the 1st Defendant is the registered proprietor of the suit property and that the suit herein is bad in law because it offends the requirement of Order 19 of the Civil Procedure Rules.

Submissions:

8. The Plaintiffs' advocate submitted that the Plaintiffs have lived on the suit property since time immemorial; that they have developed the suit property and that the suit property was unregistered when the 1st Defendant approached the Plaintiffs with a view of purchasing the land.

9. According to counsel, the Plaintiffs and their kin were duped into signing the Transfer documents after receiving only Kshs.2,020,000.

10. Counsel submitted that the mere fact that a litigant has title to the suit property is no ground to dispossesses the party who is in actual possession of the same.

11. The Plaintiffs counsel submitted that the Plaintiffs having developed the suit property, they will suffer irreparable damage if evicted.

12. Counsel submitted that the balance of convenience tilts in favour of the Plaintiffs because they are the ones in possession.

13. The Defendants' counsel submitted that the Application by the Plaintiffs is an after thought and that the Application is premature, speculative, ill motivated and devoid of triable issues.

14. Counsel submitted that the Plaintiffs do not deserve the orders sought in the Application since they have not demonstrated that they have a prima facie case with chances of success.

Analysis and findings:

15. In the Plaint, the Plaintiffs have alleged that the issuance of the title document in respect of the suit property to the 1st Defendant was procured fraudulently.

16. The ultimate prayer that is being sought in the Plaint is for a declaration that the purported transfer of L.R. NO. 28534 to the 1st Defendant was illegal, null and void.

17. The evidence before this court shows that on 10th June 2010, the 1st Plaintiff entered into an agreement of sale of unsurveyed parcel of land measuring approximately 33.6 Hectares with the 1st Defendant.
18. According to the said agreement of sale, the 1st Defendant was to purchase the suit property at a consideration of Kshs.41,500,000. The said sum was to be paid less any advances on acquisition of the Certificate of Title from the Commissioner of Lands.
19. Prior to the signing of the sale agreement, several family members of the late Manyule Mangi Yaa had purportedly signed “Special Powers of Attorney” in which they nominated the 1st Plaintiff to execute all the agreements and legal documents in respect to the suit property.
20. The Defendants have annexed numerous payment vouchers showing the sporadic payments that they made for the purposes of surveying the land, stamp duty and generally towards the process of acquiring the title.
21. Annexed on the Replying Affidavit is also a handwritten agreement dated 21st October 2010 showing that thirteen (13) family members of the Manyule Mangi's family received a total of Kshs.300,000. Another payment of 400,000 to the family was purportedly done on 6th April 2011.
22. On 19th April 2011, the Grant of Letters of Administration Intestate in respect to the Estate of the late Manyule Mangi Yaa were issued to the Plaintiffs and confirmed on 7th October 2011.
23. The Certificate of Confirmation of a grant shows that seventeen members of the family of Manyule Mangi Yaa are the ones entitled to the suit property, which was registered in favour of the late Manyule on 4th November 2011 post humously.
24. All the seventeen beneficiaries of the Estate of Mr. Manyule Mangi Yaa are supposed to have a share in the suit property equally.
25. The 1st Defendant has annexed on its Affidavit the Transfer document dated 11th November 2011 executed by all the seventeen beneficiaries of the Estate of Mr. Manyule and 1st Defendant. The said Transfer was dully registered on 14th December 2011.
26. The registration of the Transfer document dated 11th November 2011 effectively transferred the suit property to the 1st Defendant. A portion of the Transfer document reads as follows

“NOW THIS AGREEMENT WITNESSETH:

1. That in pursuance of the said agreement and in consideration of the said sum of Kenya Shillings Forty Two Million (Kshs.42,000,000_ paid to the vendor by the purchaser on or before the execution hereof (receipt of which said sum the vendors hereby acknowledge) the vendors HEREBY TRANSFERS unto the purchaser all his rights title and interest in and to ALL THAT piece of land herein before fully described.”

27. There is no evidence before me to show that indeed the 1st Defendant has paid the full purchase price to the seventeen beneficiaries of the Estate of Mr. Manyule Mangi.
28. Considering that the 1st Defendant has not shown how it paid the seventeen beneficiaries of the Estate of Mr. Manyule Mangi the full purchase price, if at all, I find that the Plaintiffs have established a prima facie case with chances of success.

29. It does not matter that the suit property has seen been registered in favour of the 1st Defendant. If it is found at trial that indeed some of the beneficiaries never signed the Transfer document, or that they were not paid the purchase price, then the court can cancel the said title.

30. It is the Plaintiffs who are likely to suffer irreparable damage that cannot be compensated by an award of damages if the injunctive order is not granted in view of the fact that they have developed the suit property.

31. For those reasons, I allow the Plaintiffs' Application dated 12th February 2014 as prayed.

Dated and delivered in Malindi this **17th** day of **July** 2015.

O. A. Angote

Judge